

Part 11—General Rulemaking Procedures

This change incorporates three amendments:

Amendment 11-39, Revision of Authority Citations, adopted December 20 and effective December 28, 1995, updates the authority citations listed in the Code of Federal Regulations to reference current law. No substantive change is introduced to Part 11 by this amendment.

Amendment 11-40, Direct Final Rulemaking Procedure, adopted March 12 and effective April 18, 1996. This amendment adds § 11.17 to Subpart A of FAR Part 11.

Amendment 11-41, General Rulemaking Procedures, is a technical amendment adopted March 29, and effective April 24, 1996, which makes the spelling of the word *rulemaking* consistent throughout Part 11.

Bold brackets enclose the newly added and revised material. The amendment number and effective date of new material appear in bold brackets at the end of each section.

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Amendment 11-39

Revision of Authority Citations

Adopted: December 20, 1995

Effective: December 28, 1995

(Published in 60 FR 67254, December 28, 1995)

SUMMARY: This rule adopts new authority citations for Chapter I of Title 14 of the Code of Federal Regulations (CFR). In 1994, the Federal Aviation Act of 1958 and several other statutes conferring authority upon the Federal Aviation Administration were recodified into positive law. This document updates the authority citations listed in the Code of Federal Regulations to reference the current law.

DATES: This final rule is effective December 28, 1995. Comments on this final rule must be received by March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Petronis, Office of the Chief Counsel, Regulations Division (AGC-210), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073.

SUPPLEMENTARY INFORMATION: In July 1994, the Federal Aviation Act of 1958 and numerous other pieces of legislation affecting transportation in general were recodified. The statutory material became "positive law" and was recodified at 49 U.S.C. 1101 *et seq.*

The Federal Aviation Administration is amending the authority citations for its regulations in Chapter I of 14 CFR to reflect the recodification of its statutory authority. No substantive change was intended to any statutory authority by the recodification, and no substantive change is introduced to any regulation by this change.

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this action. Interested persons are invited to comment by submitting such written data, views, or arguments as they may desire by March 1, 1996. Comments should identify the rules docket number (Docket No. 28417) and be submitted to the address specified under the caption "FOR FURTHER INFORMATION CONTACT."

Because of the editorial nature of this change, it has been determined that prior notice is unnecessary under the Administrative Procedure Act. It has also been determined that this final rule is not a "significant regulatory action" under Executive Order 12866, nor is it a significant action under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). Further, the editorial nature of this change has no known or anticipated economic impact; accordingly, no regulatory analysis has been prepared.

Adoption of the Amendment

In consideration of the forgoing, the Federal Aviation Administration amends 14 CFR Chapter I effective December 28, 1995.

The authority citation for part 11 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, 46102.

Vice President's National Performance Review, and the Administration's Civil Aviation Initiative, the Federal Aviation Administration (FAA) is implementing a new and more efficient procedure for adopting non-controversial or consensual rules. The "direct final rulemaking" procedure involves issuing a final rule with an opportunity for notice and comment. This final rule will contain a statement that if the FAA receives no adverse or negative comment, or notice of intent to file such a comment, the rule will become effective at the end of a specified period of time after the close of the comment period. This new procedure is expected to reduce significantly the time needed to publish non-controversial or consensual final rules.

FOR FURTHER INFORMATION CONTACT: Donald P. Byrne, Assistant Chief Counsel for Regulations (AGC-200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073.

SUPPLEMENTARY INFORMATION:

Background

In Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), the President set forth the Administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of the limited government resources available for carrying out its regulatory functions. In responding to both the letter and the spirit of the President's order, the Secretary of Transportation has directed administrations within the Department of Transportation (DOT) to focus on improvements that can be made in the way in which they propose and adopt regulations.

The Administrative Conference of the United States (ACUS), prior to its dissolution, observed that the rulemaking process has become increasingly time consuming. Aviation interests in particular have expressed concern to the FAA over the time-consuming nature of the regulatory process. ACUS believed that agencies should consider innovative methods for developing rules and obtaining public input, including the use of groups such as advisory committees and negotiated rulemaking committees. The FAA and the aviation industry have been engaged in one such effort for several years through the Aviation Rulemaking Advisory Committee (ARAC).

In addition to focusing on consensus-based rulemaking, ACUS believe that agencies should consider the use of "direct final" rulemaking where appropriate to eliminate duplicative agency review and publication of non-controversial rules. Under the direct final rule procedure, an agency issues a final rule with an opportunity for comment and a statement that if the agency receives no adverse or negative comments, the rule becomes effective at a specified time after the close of the comment period. If an adverse comment, or a notice of intent to file such a comment, is received, the agency withdraws the rule before the effective date and issues a notice of proposed rulemaking (NPRM) in the normal manner.

This expedited process was recommended also by the Vice President in his report on the National Performance Review ("Creating a Government That Works Better and Costs Less; Improving Regulatory Systems"). Use of the process is encouraged in rulemakings in which agencies do not believe there will be adverse public comment, in order to help agencies streamline their rulemaking procedures.

The FAA published a notice of proposed rulemaking in the *Federal Register* on October 4, 1994 (59 FR 50676) that proposed using the direct final rulemaking procedure for non-controversial rules and for consensual rules, where the FAA believes there will be no adverse public comment. The FAA has determined that this expedited process can be used effectively for a number of future agency rules, including many of the proposed regulations based on recommendations of broad-based advisory committee groups such as ARAC. The FAA would consider issuing a direct final rule where such an advisory committee has involved representatives of all interested parties in negotiating a proposed rule; the committee has reached a unanimous recommendation; and the nature of the negotiations leads the FAA to believe the public will not file adverse comments. The FAA would expect this often to be the case, for example,

When the FAA believes that a proposed regulation is unlikely to result in adverse comment, it may choose to use the direct final rulemaking process. The direct final rule will advise the public that no adverse comments are anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, is received within the comment period, the regulation will become effective at the end of a specified period of time after the close of the comment period. If no written adverse or negative comment, or notice of intent to submit such a comment, is received within the comment period, the direct final rule will become effective on the date indicated in the rule. The FAA will publish a notice in the *Federal Register* indicating that no adverse comments were received and confirming the date on which the final rule will become effective. The confirmation notice will be issued at least 30 days prior to the effective date specified in the direct final rule.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a notice of withdrawal of the direct final rule will be published in the *Federal Register*, and an NPRM may be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.

The direct final rulemaking procedure provides that either the adverse comment or the notice of intent to submit such a comment must be received within the comment period. If a commenter files a notice of intent to submit an adverse comment within the comment period, the substantive comment does not have to be received within the comment period. Although no specific time interval between the filing of the notice and the receipt of the substantive comment is specified, the FAA would expect to receive the substantive comment no later than 30 days after the comment period closes. The FAA may consider mandating a specific interval if experience shows a set deadline is needed. If no substantive comment is received following the submission of a notice, the FAA may elect to publish a new direct final rule that addresses the filing of a notice of intent to submit an adverse or negative comment without the subsequent comment being received by the agency. The agency intends to monitor the notice of intent to file an adverse comment process over the next year and may propose changes to this procedure if substantive adverse comments are not received following the submission of a notice.

Comments that are outside the scope of the rule will not be considered adverse under this procedure. A comment recommending other rule changes in addition to the changes in the direct final rule would not be considered an adverse comment, unless the commenter states that the rule would be inappropriate as proposed or would be ineffective without the additional change. A comment not so qualified may be considered beyond the scope of the rulemaking.

Although the FAA anticipates that direct final rulemaking will improve the rulemaking process and that the procedures established by this action will work well in actual practice, the FAA may propose modifications to the procedures. The FAA will closely monitor those rulemaking actions selected for direct final rulemaking to determine whether further action is warranted on the following issues:

- (1) Are notices of intent to file an adverse comment followed by a substantive comment, and within what time period?
- (2) Should the notice of intent to file an adverse comment include a general discussion of the nature of the adverse comment?
- (3) Could the adverse comment be addressed by a subsequent direct final rule or should an NPRM always be issued?

Discussion of Comments

Twenty-nine comments were received from aviation industry associations, state aviation authorities, businesses, and the general public. The commenters raised several common themes and they have been grouped together.

interest," as in the case of an emergency. The agency was not required to provide any comment period but decided to do so anyway. Adopting the direct final rule procedure will not change those procedures. The direct final rule procedure is based on the third APA exception to the prior publication requirement where notice and comment are "unnecessary." Even though the agency will be making the finding that prior notice and comment would be unnecessary, the direct final rule procedure does provide an opportunity for public comment prior to the proposed effective date of the rule. Moreover, regardless of their merits, any comment (within the scope of the rule) or intent to file a negative or adverse comment will result in the withdrawal of the direct final rule.

Although some of the AD's that will be issued may be candidates for the direct final rule procedure, those AD's that are covered under final rule with request for comments procedures would not be candidates for a direct final rule. These methods of rulemaking are entirely distinct from the direct final rule process. Emergency rulemaking has been permitted under the APA for many years, and the FAA will continue to use that authority whenever it is necessary. Emergency rulemaking frequently results in the rule becoming effective before the close of the comment period. The emergency nature of the rulemaking demands that action be taken before an opportunity for notice and comment can be completed. The rationale for using that emergency authority will continue to be expressed in the preamble to the rule as required by the APA. Direct final rulemaking, on the other hand, is not designed for emergency situations. In an emergency rule, the agency makes a finding that prior notice and comment is not possible due to the nature of the emergency. In a direct final rule, the agency would ask if there were any negative comments and might subsequently have to publish an NPRM. Any action taken under direct final rulemaking would follow the solicitation of comments.

The FAA intends to use the direct final rule procedure when adverse comments are not expected. Many of the rules, including AD's, for which the FAA publishes a notice of proposed rulemaking do not generate any comments. Some rules only generate general letters of support thanking the agency for the opportunity to comment without raising any substantive issues or concerns. These rulemaking proposals are subsequently adopted as proposed with only minor format changes to conform to final rule requirements. Although these rules are not controversial, considerable agency resources are expended to prepare both the notice and the final rule.

More than thirty years of rulemaking experience has made the FAA cognizant of which rules are likely to generate adverse comments. The agency intends to use its years of experience to decide which rules are likely to be noncontroversial and thus appropriate for direct final rule procedures. If the agency has misjudged a particular rule, the public still would be afforded an opportunity for adverse comment and subsequently for comment through the normal NPRM process when the direct final rule is withdrawn. The direct final rulemaking procedure is not designed to keep the public from having an adequate opportunity to comment.

One commenter believes that the voices of part of the public would not be heard because other interests are more likely to dominate the process. The FAA does not intend to use the direct final rule procedure when the circle of those affected is so large or inadequately represented that the level of controversy cannot be determined. Even one adverse comment, from any source, would trigger the traditional NPRM process.

Time Allotted for Comment

Several commenters raise the concern that the time available for comment on a direct final rule would be inadequate. The Helicopter Association International (HAI) is concerned that the effective date of the direct final rule could be set before the close of the comment period. The Aircraft Owners and Pilots Association (AOPA) raises concerns that the direct final rule proposal truncates the minimum procedural requirements of the APA. Some small organizations comment that as small organizations they do not have a full time staff to monitor proposed rulemaking and other developments within the FAA. In addition, the United States Parachute Association suggests that the FAA provide automatic notice to any special interest group that is affected by a proposed rulemaking.

time for a comment period to remain open, Executive Order 12866 provides that the comment period remain open for a minimum of 60 days unless a shorter period is justified in the preamble to the rule. Most FAA rulemaking projects, particularly those with international ramifications, have comment periods ranging from 60 to 120 days. Many AD's and airspace actions have comment periods of 30, 45, or 60 days. The FAA is aware that occasionally some members of the public do not learn of a rulemaking until close to the end of the comment period. Although no system is perfect, the FAA tries to allow adequate time for the submission of comments. For direct final rules of interest to non-U.S. commenters, the FAA intends to have a comment period that is adequately long to accommodate these commenters. Section 11.29(c) of the Federal Aviation Regulations (14 CFR §11.29(c)) contains a provision for a potential commenter to request an extension of the comment period. That provision may be invoked under direct final rulemaking procedures. On many occasions, the FAA has extended or reopened a comment period when commenters have asserted that they had insufficient time to prepare substantive comments.

The direct final rule program will follow the guidelines established under the APA and FAA policy for the solicitation of comments. Although a commenter may not have had time to fully develop its concerns, the filing of a notice of the intent to submit adverse comments, in effect, will stop the direct final rule from becoming effective. The FAA does not intend to require that a written notice of the intent to submit adverse comments adhere to any specific format. The notice may be merely a letter to the FAA Rules Docket clearly stating its purpose. The commenter should then submit its substantive objections and concerns as soon as possible.

Nature of an Adverse Comment

Several commenters raise concerns that the agency would label adverse or negative comments as "non-adverse" and proceed to finalize the rule. These commenters request either standards for determining or guidance for deciding what would constitute an adverse comment. The Air Transport Association (ATA) suggests that the FAA define the terms "adverse" and "negative." In addition, ATA is concerned that a proposal drafted with the consensus of the regulated entities (such as an ARAC proposal) that addresses counterpoints that were considered and rejected (as explained in the preamble) could be subject to delay if a party to the process or a non-party to the process elected to file a notice of intent to file an adverse comment.

The FAA finds it unnecessary to specifically define "adverse" and "negative". If commenters are concerned that their comments may be misinterpreted, they can clearly state in their comment that the comment is adverse. In determining whether an adverse comment is sufficient to terminate a direct final rulemaking, the FAA would consider whether a comment would be one that would warrant a substantive response in a notice-and-comment process. The FAA would recognize the following, among other things, as an indication of the adverse nature of a comment:

- The commenter so states.
- The commenter states that the requirements are unusually burdensome.
- The commenter states that the requirements would generate significant controversy as to the agency's proposed solution to the problem.
- The commenter states that the requirement would result in an unwarranted significant change in existing practice.
- The commenter states that the requirement would impose a significant cost.
- The commenter states that viable, named alternatives should have been considered.
- The commenter states that the proposed rule would be ineffective or inappropriate.
- The commenter states that the rule would have an unintended effect.

“Corrections” generally fall into two categories. The first category are those errors and omissions that should not have occurred. Using an AD as an example, such an error could be specifying a particular part number for all models of an aircraft when it was incorrectly thought that that part was used in all variants of that model aircraft. The FAA agrees that the commenters, particularly the part manufacturers and aircraft operators, note these errors in their comments. In this type of situation, the “notice” confirming the effective date of the rule would be styled as a “final rule; correction” to address the error. Because this type of correction would not impose any additional burden on the operators, the correction would be within the scope of the direct final rule, and an NPRM would not need to be issued. The second type of error typically involves a proposal that has an unintended result or neglects to cover all that it should. Again using the AD context, such an error could occur if the FAA learns that a particular variant of a model aircraft that should have been covered by the AD was not. Because the operators of the noncovered aircraft would not have been alerted to the potential requirements, the comment period must be reopened to give them notice and an opportunity to comment. If such a situation were to occur in the direct final rule context, the FAA may issue a new, superseding direct final rule or an NPRM. The more significant the correction, the more likely an NPRM would be issued. The FAA anticipates that the need for corrections in direct final rulemaking to be infrequent.

Response to Comments

Several commenters note that the discussion of comments in a final rule preamble is beneficial to the public in understanding the intent of the proposal, and one commenter questions what would become of adverse comments leading to the withdrawal of the direct final rule and the issuance of an NPRM.

The FAA agrees the discussion of comments in a final rule can be beneficial to the public because the disposition of comments provides the FAA the opportunity to clarify and explain difficult points in a proposal. Where comments to a direct final rule indicate that the rule is not clear, such comments could be considered adverse and, if so, would result in withdrawal of the direct final rule. However, if comments to a direct final rule indicate that only minor changes are needed to clarify the rule language without changing the substance of the requirement, such a minor revision could be made at the time notice confirming the effective date is given.

Any adverse comments received on a proposed direct final rule would be discussed either in the subsequent NPRM preamble or in the preamble of the subsequent final rule.

Review Process

Some commenters would like guidance to be issued as to who would decide, and how, that a new or revised rule is noncontroversial or consensual. Another commenter believes that the current NPRM process is adequate, but the delays in issuing rules is the result of the FAA review process.

The agency will base its decision as to which rules are noncontroversial or consensual on its extensive interface with the aviation community, industry comments to the FAA’s rulemaking programs, petitions for rulemaking, and the guidelines discussed previously. The agency’s conclusion also will be reviewed, in effect, by the highest levels within the agency and by the Office of the Secretary and the Office of Management and Budget during their review of the “non-significant” designation for the rule. Because the potential for lost time is present if the agency misjudges the acceptability of a particular rule, the agency will tend to be very conservative in its assessment of those projects that are candidates for direct final rulemaking.

As to the timeliness of the rulemaking process, most of the reviews and analyses that must be performed by the agency are mandated by statutory provisions, Executive Orders, or Departmental policy. Because rulemaking in today’s complex environment touches many diverse interests, review by many internal FAA offices is necessary to prevent later problems that may require revising the rule. The FAA has expanded its use of advisory committees to obtain predecisional input, sought increases in

to the FAA's finding that a rule is "not significant." The FAA is not aware of any rule that it has designated as "non-significant" that has imposed a significant economic burden. Rules that are determined to be significant would not be candidates for the direct final rule process.

Whether a proposal begins as a traditional NPRM or as a direct final rule, the public will be given an opportunity to review the proposal and provide comment, just as with the NPRM-to-final rule process that predominates today. The only significant difference is that when direct final rules receive no adverse comment, only a confirmation notice of the effective date will be published after the close of the comment period.

Comments Outside the Scope of the Notice

The ATA notes that the FAA's labeling of a comment as "outside the scope" of the rulemaking should not automatically make that comment nonadverse. In addition, AOPA wishes the phrase "comments outside the scope of the rule" to be narrowly construed.

A comment that is designated as "outside the scope" of the rule would not be considered adverse because the comment does not address the subject of the specific rule change that is being made. The FAA intends to label a comment as being beyond the scope of the rulemaking only when the commenter raises an issue that was not the subject of the rulemaking. An alternative to the rulemaking is generally within the scope of the rulemaking. The FAA addresses comments received that are relevant to the proposed rule. The FAA will make every attempt to properly address and characterize all comments. The "scope" concept is not new; it is part of the agency's determination concerning comments on NPRM's. All comments received, including those determined to be outside the scope of the rule, will become part of the official rulemaking file.

ARAC

The ATA feels the proposal is premature until problems with the ARAC process are resolved. In addition, AOPA wants to ensure that its members will be given an adequate opportunity to provide input to the agency before the agency's position has been determined. The RAA opposes the use of direct final rules for AD's and other rules that have not had the benefit of consensus-building through the ARAC, but would consider changes that make rules less stringent appropriate for direct final rulemaking.

The FAA agrees that it is important for the public to have their views considered as early as practicable in the rulemaking process. The ARAC process is one means by which the agency is trying to seek out public input before a rule is drafted. Because ARAC-proposed rules have early public involvement, the FAA believes that they would be ideal candidates for the direct final rule process. In addition, the FAA is working to improve the ARAC process. A meeting was held with the ARAC members in late 1994 to resolve issues and improve the process. Recommendations from that meeting are being implemented. However, the FAA must start the process for implementing direct final rulemaking now in order to have it in place when the majority of ARAC-prepared proposals reach the agency. When the ARAC makes a recommendation to the FAA, the FAA may elect to turn that recommendation into a direct final rule. Other ARAC recommendations may become NPRM's. If the ARAC has not been able to reach consensus on a particular proposal, such a proposal would be considered to result in public comment.

The FAA agrees with the RAA that some changes that make rules less stringent and many ARAC rule proposals would be appropriate for the direct final rule process. The FAA does not agree, however, that direct final rulemaking should not be used for some AD's or other non-ARAC projects. Many AD's are issued each year in which no comments are received on the proposal. In many others, the comments result in only minor changes. The time saved by using the direct final rule process will benefit the public. The FAA notes that some AD's and other important rulemaking projects would be inappropriate for the direct final rulemaking process. The FAA emphasizes that direct final rulemaking will only be used when there is a reasonable assurance that adverse comments are unlikely.

No action would be required by a direct final rule until such time as it becomes effective.

Another commenter would like to amend the proposal to require a "high" degree of consensus among the parties affected by the rule before the direct final rule procedure is invoked. (The proposal used the term "broad" instead of "high.") The FAA would only consider "consensus" as indicating that a direct final rule is appropriate when that consensus is complete, i.e., when there are no indications of dissenting opinion. This could be characterized as a "high" degree of consensus.

A commenter suggests issuing some form of public periodical containing a listing of those upcoming proposals that the agency believes are non-controversial. The FAA agrees and intends to use the "Semiannual Regulatory Agenda" (Agenda) to partially fulfill this request. Published twice a year, the Agenda provides a summary of every known future rulemaking, except routine actions such as AD's and airspace actions. The FAA believes that such a listing could be included as part of the electronic bulletin board and will investigate adding the listing.

One commenter raises several concerns with the AD system that were beyond the scope of the notice. These concerns will be forwarded to the office with responsibility for the AD system for review.

General Support for Proposal

Five commenters stated general support for the direct final rule proposal, but some had concerns that have been discussed earlier. The Joint Aviation Authorities (JAA) supports the direct final rule proposal because it will speed up the FAA rulemaking process for those rules that are being harmonized with the Joint Aviation Regulations.

Regulatory Evaluation

This amendment to part 11 will provide a new and more efficient procedure for adopting non-controversial or consensual rules. The FAA believes that there will be no cost with the use of this procedure in appropriate instances. Use of this alternative procedure is expected to reduce the costs of rulemaking to the FAA by eliminating duplicate publication of rule text when no adverse comment was received. In cases where the rule will result in cost savings to the aviation industry, use of this alternative will allow the industry to achieve these cost savings sooner than if the current rulemaking procedures were used. Accordingly, the FAA has determined that because no costs can be foreseen and the expected economic impact of the amendment is minimal and may save the industry money, a full regulatory evaluation is not warranted.

International Trade Impact

The rule is only a change in the FAA's procedure for rulemaking and will result in some improvement in the processing time for projects to harmonize FAA regulations with those of the JAA.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 ensures that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this proposed rule are minimal, and are well below any threshold established by FAA Order 2100.14A. Accordingly, this rule will not have a significant economic impact on any small entity.

Federalism Implications

The regulations adopted herein will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 11 effective April 18, 1996.

The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

Amendment 11–41

General Rulemaking Procedures

Adopted: March 29, 1996

Effective: April 24, 1996

(Published in 61 FR 18052, April 24, 1996)

SUMMARY: The Federal Aviation Administration is making an editorial change to part 11 by changing the words “rule making” and “rule-making” to read “rulemaking”. The change is being made for consistency.

FOR FURTHER INFORMATION CONTACT: Clara Thieling, Office of the Chief Counsel, Regulations Division (AGC–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3123.

SUPPLEMENTARY INFORMATION:

Background

In response to inquiries as to the uniformity of the spelling of the word rulemaking, the FAA is making an editorial change to part 11 to change the spelling of “rule-making” and “rule making” to “rulemaking”. Because this action is merely a technical amendment, the FAA finds that prior notice and public procedure under 5 U.S.C. 553(b)(3)(B) are unnecessary. For the same reason, the FAA finds that good cause exists for making this amendment effective upon publication.

The Amendment

The FAA amends 14 CFR part 11 effective April 24, 1996.

The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

§ 11.1 Applicability.

This part applies to the issue, amendment, and repeal of—

(a) Rules and orders for airspace assignment and use issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and

(b) Other substantive rules, including those applicable to a class of persons, and those addressed to and served on named persons whenever the Administrator decides to use public **[rulemaking]** procedures in such a case.

§ 11.11 Docket.

Official FAA records relating to **[rulemaking]** actions, including: (a) Proposals, (b) notices of proposed **[rulemaking]**, (c) written material received in response to notices, (d) petitions for **[rulemaking]** and exemptions, (e) written material received in response to summaries of petitions for **[rulemaking]** and exemptions, (f) petitions for rehearing or reconsideration, (g) petitions for modification or revocation, (h) notices denying petitions for **[rulemaking]**, (i) notices granting or denying exemptions, (j) summaries required to be published under § 11.27, (k) special conditions required, as prescribed under § 21.16 or § 21.101(b)(2), (l) written material received in response to published special conditions, (m) reports of proceedings conducted under § 11.47 (n) notices denying proposals, and (o) final rules or orders are maintained in current docket form in the Office of the Chief Counsel. A public docket relating to **[rulemaking]** actions taken by each Regional Administrator on petitions for exemption filed under part 139 of this chapter is maintained in the office of the Assistant Chief Counsel for that region. Unless a request for comment indicates otherwise, a public docket relating to **[rulemaking]** actions taken by Regional Administrators under subparts D and E of this part is maintained in the office of the Assistant Chief

Counsel. Any interested person may examine any docketed material at that office, at any time after the docket is established, except material that is ordered withheld from the public under section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504), and may obtain a photostatic or duplicate copy of it upon paying the cost of the copy.

(Amdt. 11-4, Eff. 11/2/64); (Amdt. 11-6, Eff. 1/1/67); (Amdt. 11-12, Eff. 9/20/72); (Amdt. 11-16, Eff. 3/20/79); (Amdt. 11-20, Eff. 10/14/80); (Amdt. 11-32, Eff. 10/25/89); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.13 Delegation of authority.

All agency officials, with regulatory issuance authority, may exercise the authority of the Administrator to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96-354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part.

Docket No. 22081 (46 FR 41488), Eff. 8/17/81; (Amdt. 11-2, Eff. 5/29/64); (Amdt. 11-22, Eff. 8/17/81)

§ 11.15 Emergency exemptions.

If, as a result of enemy attack on the United States, communication with Washington headquarters of FAA is or may be disrupted or materially impaired, petitions for exemptions from any rule issued under Titles III or VI of the Federal Aviation Act of 1958 (air safety rules and air traffic and airspace rules) may also be filed at the nearest FAA Regional Office, air traffic control facility or office, Flight Standards District Office, Aircraft Certification Directorate, Aircraft Certification Office, International Field Office or FAA Representative in the Europe, Africa, and Middle East Region, or in the Pacific Region. The procedural requirements of §§ 11.53, 11.71, and 11.91, and the publication and comment procedures of § 11.27 need not be followed. Under these emergency

Cumstances are at all times subject to modification and termination by the Regional Administrator or Acting Regional Administrator or officer in charge of the Region concerned, subject to ultimate action by the Director or Acting Director of the Service concerned.

(Amdt. 11-2, Eff. 5/29/64); (Amdt. 11-5, Eff. 8/20/66); (Amdt. 11-10, Eff. 11/22/68); (Amdt. 11-11, Eff. 3/29/71); (Amdt. 11-16, Eff. 3/20/79); (Amdt. 11-32, Eff. 10/25/89)

[§ 11.17 Direct final rule.]

【Whenever the FAA anticipates that a proposed regulation is unlikely to result in adverse comment, it may choose to issue a direct final rule. The

within the comment period, the direct final rule will become effective on the date indicated in the direct final rule. The FAA will publish a document in the *Federal Register* indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the *Federal Register*, and a notice of proposed rulemaking may be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.】

【(Amdt. 11-40, Eff. 4/18/96)】

(a) This subpart applies to substantive rules, other than those relating to airspace assignment and use.

(b) Unless the Administrator, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, the FAA issues notices of proposed [rulemaking] and allows interested persons to participate in [rulemaking] proceedings involving a substantive rule.

(c) Unless the Administrator determines that notice and [rulemaking] procedures are to be followed, interpretive rules, general statements of policy, and rules of FAA organization, procedure, or practice are prescribed as final without notice or [rulemaking] procedures.

(d) Whenever the Administrator so determines, the procedures prescribed in this subpart apply to exempting persons and classes from the requirements of a substantive rule.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.23 Initiating [rulemaking] procedures.

The Administrator initiates [rulemaking] procedures upon his own motion. However, in doing so, he considers the recommendations of other agencies of the United States and the petitions of other interested persons.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.25 Petitions for [rulemaking] or exemptions.

(a) Any interested person may petition the Administrator to issue, amend, or repeal a rule whether or not it is a substantive rule within the meaning of § 11.21, or for a temporary or permanent exemption from any rule issued by the Federal Aviation Administration under statutory authority.

(b) Each petition filed under this section must—

(1) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 120 days before the proposed effective date of the exemption;

(i) To the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport, in the case of any petition for exemption filed under part 139 of this chapter;

(ii) To the Director having Airworthiness Directive responsibility for the product involved in the case of petitions filed in accordance with subpart D of this part.

(iii) To the Federal Air Surgeon (AAM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in the case of a petition for exemption filed under part 67 of this chapter; and

(iv) To the Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, in all other cases.

(3) Set forth the text or substance of the rule or amendment proposed, or of the rule or statute from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(4) Explain the interests of the petitioner in the action requested including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of each aircraft or person to be covered by the exemption;

(5) Contain any information, views, or arguments available to the petitioner to support the action sought, the reasons why the granting of the request would be in the public interest and, if appropriate, in the case of an exemption, the reason why the exemption would not adversely affect safety or the action to be taken by the petitioner to provide a level of safety equal to that provided by the rule from which the exemption is sought; and

(6)(i) In the case of a unit of Federal, state, or local government that is applying for an exemption from any requirement of part A of subtitle VII of title 49, United States Code, that would otherwise be applicable to current or future aircraft of such unit of government as a result

(B) The aviation safety program of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.

(ii) The authority of the Administrator under the Independent Safety Board Act Amendments of 1994, Pub. L. 103-411, to grant exemptions to units of government is delegated to the Director, Flight Standards Service, and the Director, Aircraft Certification Service.

(c) A petition for **[rulemaking]** filed under this section must contain a summary, which may be published in the *Federal Register* as provided in § 11.27(b), which includes—

(1) A brief description of the general nature of the rule requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting **[rulemaking]** procedures.

(d) A petition for exemption filed under this section must contain a summary, which may be published in the *Federal Register* as provided in § 11.27(c), which includes—

(1) A citation of each rule from which relief is requested; and

(2) A brief description of the general nature of the relief requested.

(Amdt. 11-5, Eff. 8/20/66); (Amdt. 11-8, Eff. 4/25/67); (Amdt. 11-12, Eff. 9/20/72); (Amdt. 11-14, Eff. 9/6/77); (Amdt. 11-16, Eff. 3/20/79); (Amdt. 11-17, Eff. 5/27/80); (Amdt. 11-32, Eff. 10/25/89); (Amdt. 11-38, Eff. 4/23/95); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.27 Action on petitions for **[rulemaking] or exemptions.**

(a) *General.* Except for the publication and comment procedures provided for in this section, no public hearing, argument, or other formal proceeding is held directly on a petition, filed under § 11.25, before its disposition by the FAA.

(b) *Publication of summary of petition for **[rulemaking]**.* After receipt of a petition for **[rulemaking]**, except as otherwise provided in

[rulemaking] procedures; and

(5) In appropriate situations, a list of questions to assist the FAA in obtaining comment on the petition.

Comments on the petition for **[rulemaking]** must be filed, in triplicate, within 60 days after the summary is published in the *Federal Register* unless the Administrator, for good cause, finds a different time period appropriate. Timely comments received will be considered by the Administrator before taking action on the petition.

(c) *Publication of summary of petition for exemption.* After receipt of a petition for exemption, except as otherwise provided in paragraphs (i) and (j) of this section, the FAA publishes a summary of the petition in the *Federal Register* which includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A citation of each rule from which relief is requested; and

(4) A brief description of the general nature of the relief requested.

Comments on the petition for exemption must be filed, in triplicate, within 20 days after the summary is published in the *Federal Register* unless the Administrator, for good cause, finds a different time period appropriate. Timely comments received will be considered by the Administrator before taking action on the petition.

(d) *Instituting **[rulemaking]** procedures based on a petition.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for **[rulemaking]**, that the petition discloses adequate reasons, the FAA institutes **[rulemaking]** procedures.

(e) *Grant of petition for exemption—summary.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for exemption, that the petition is in the public interest, the Administrator grants the exemption and, except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the grant of the petition for exemp-

(f) *Denial of petition for [rulemaking]*. If the Administrator determines, after consideration of any comments received in response to a summary of a petition for [rulemaking], that the petition does not justify instituting [rulemaking] procedures, the FAA notifies the petitioner to that effect. Except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the denial of the petition for [rulemaking] in the *Federal Register* in accordance with paragraph (h) of this section.

(g) *Denial of petition for exemption*. If the Administrator determines, after consideration of any comments received in response to a summary of a petition for exemption, that the petition does not justify granting the requested exemption, the FAA notifies the petitioner to that effect. Except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the denial of the petition for exemption in the *Federal Register* in accordance with paragraph (h) of this section.

(h) *Summary of denial of petition for [rulemaking] or exemption*. A summary of a denial of a petition for [rulemaking] or exemption includes—

- (1) The docket number of the petition;
- (2) The name of the petitioner;
- (3) In the case of a denial of a petition for exemption, a citation of each rule from which relief is requested;
- (4) A brief description of the general nature of the rule or relief requested; and
- (5) The disposition of the petition.

(i) *General exceptions*. The publication and comment procedures of paragraphs (b) through (h) of this section do not apply to the following:

(1) To petitions for [rulemakings] or exemptions processed under § 11.83.

(2) To petitions for exemptions from the requirements of part 67 of this chapter.

(j) *Exceptions to publication of summary of petition for exemption*. The publication and comment procedures of paragraph (c) of this section do not apply to the following:

by the publication and comment procedures. Factors that may be considered in determining whether good cause exists, include—

(i) Whether a grant of exemption would set a precedent or whether the petition for exemption and the reasons presented in it are identical to exemptions previously granted;

(ii) Whether the delay in acting on the petition for exemption that would result from publication would be detrimental to the petitioner; and

(iii) Whether petitioner acted in a timely manner in filing the petition for exemption.

(k) *Status of petition for [rulemaking]*. Within 120 days after publication in the *Federal Register* of a summary of petition for [rulemaking] and every 120 days thereafter, unless sooner denied under § 11.51 or issued as a notice of proposed [rulemaking] under § 11.65, the Office or Service concerned shall advise petitioner in writing of the status of the petition.

(l) *Additional specific provisions*. Specific provisions covering actions on petitions are set forth in subpart C of this part.

(Amdt. 11-16, Eff. 3/20/79); (Amdt. 11-20, Eff. 10/14/80); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.28 Action on special conditions.

(a) *General*. Except for the publication and comment procedures provided for in this section, no public hearing, argument, or other formal proceeding is held directly on a special condition established by the Administrator.

(b) *Procedures*. This subpart and subpart C apply to the issue, amendment, and repeal of special conditions under part 21. In addition to the information required by § 11.29(b), each notice will include—

- (1) The name and address of the applicant;
- (2) The model designation and a summary description of the affected product;
- (3) The applicable type design approval regulations designated in accordance with § 21.17 or § 21.101 of part 21; and

【rulemaking】 is published in the *Federal Register*, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the *Federal Register* or personally served, includes—

(1) A statement of the time, place, and nature of the proposed 【rulemaking】 proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceedings, as prescribed by §§ 11.31 and 11.33.

(c) A petition for extension of the time for comments must be submitted in duplicate not later than two days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted it is published in the *Federal Register*.

(Amdt. 11-1, Eff. 4/23/63); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.31 Participation of interested persons in 【rulemaking】 procedures.

(a) Each interested person is entitled to participate in 【rulemaking】 proceedings by submitting written information, views, or arguments. In addition, he may comment on the original information, views, and arguments submitted by other persons, if, after receiving them, the Administrator considers it desirable.

(b) In any appropriate case, the Administrator also allows interested persons to participate in the 【rulemaking】 procedures described in § 11.33.

[(Amdt. 11-41, Eff. 4/24/96)]

ings presided over by a designated FAA official at which a stenographic transcript is made, or participate in any other procedure whenever it is desirable and appropriate to assure informed administrative action and adequate protection of private interests.

(b) Any appropriate combination of the procedures described in paragraph (a) of this section may be used in addition to the basic procedure of allowing interested persons to participate in 【rulemaking】 proceedings by submitting written information, views, or arguments.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.35 Participation by Civil Aeronautics Board in 【rulemaking】 proceedings.

(a) Under section 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1481), the Civil Aeronautics Board may appear and participate as an interested party in any proceeding conducted by the Administrator under Title III of that Act, and in any proceeding under Title VI of that Act that cannot be appealed to the National Transportation Safety Board.

(b) To indicate its intention to participate in any proceeding described in paragraph (a) of this section, the Civil Aeronautics Board may file written information, views, or arguments in response to a notice of proposed 【rulemaking】 issued by the Administrator. The Civil Aeronautics Board is entitled to the procedural privileges accorded other parties and is equally free to participate.

Docket No. 8084 (32 FR 5769), Eff. 4/11/67

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.37 Requests for informal appearances.

(a) Upon his request, any interested person may appear informally before an appropriate official of the FAA to present, adjust, or determine a question or controversy relating to a 【rulemaking】 function of the FAA.

(b) A request for an appearance under this section must be sent in writing to the Federal Aviation Administration, Washington, DC 20590, or to the

§ 11.41 Scope.

(a) This subpart prescribes the supplemental procedures to be followed by the Offices and Services of the FAA in [rulemaking] proceedings and in granting or denying exemptions from rules. It also designates the Office or Service that is authorized to act for the Administrator in connection with those proceedings and exemptions. Any authority conferred by this subpart on the head of any Office or Service is also conferred on the Associate Administrator (if any) who exercises executive direction over that official.

(b) This subpart applies to [rulemaking] procedures other than for Airworthiness Directives and rules relating to Airspace Assignment and Use.

(c) For the purposes of this subpart—

(1) The words “Office or Service” include the Technical Center, and include Regional Administrators with respect to petitions for exemptions from the requirements of part 139 of this chapter; and

(2) “Chief Counsel” means—

(i) The Chief Counsel;

(ii) An Assistant Chief Counsel with respect to petitions for exemptions from the requirements of part 139 of this chapter;

(iii) The Assistant Chief Counsel for Regulations and Enforcement for all other exemptions processed under this subpart; or

(iv) Any person to whom the Chief Counsel has delegated authority in the matter concerned.

(Amdt. 11-5, Eff. 8/20/66); (Amdt. 11-6, Eff. 1/1/67); (Amdt. 11-8, Eff. 4/25/67); (Amdt. 11-12, Eff. 9/20/72); (Amdt. 11-15, Eff. 11/9/78); (Amdt. 11-32, Eff. 10/25/89); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.43 Processing of petitions for [rulemaking] or exemption from parts of this chapter.

Whenever the FAA receives a petition for [rulemaking] or for an exemption, a copy of the

petition is referred for action, as provided in § 11.27, to the Office or Service having substantive responsibility for the subject involved.

Docket No. 15457 (41 FR 11271), Eff. 3/18/76; (Amdt. 11-13, Eff. 3/18/76); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.45 Issue of notice of proposed [rulemaking].

Whenever he determines that a notice of proposed [rulemaking] is necessary or desirable, the head of the Office or Service concerned may, subject to the approval of the Chief Counsel with respect to form and legality, issue the notice provided for in § 11.29. In addition, he may grant or deny petitions for extension of the time for comments on the notice, filed under § 11.29(c).

(Amdt. 11-1, Eff. 4/23/63); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.47 Proceedings after notice of proposed [rulemaking].

(a) Each person who submits written information, views, or arguments in response to a notice of proposed [rulemaking], or during additional [rulemaking] proceedings in connection with such a notice, must file the number of copies specified in the notice. All timely comments are considered before final action on the [rulemaking] proposal is taken. Late filed comments are considered so far as possible without incurring expense or delay.

(b) Whenever the head of the Office or Service concerned determines that additional [rulemaking] proceedings of the kind described in § 11.33 are necessary or desirable, he may designate representatives to conduct those proceedings.

(Amdt. 11-5, Eff. 8/20/66); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.49 Adoption of final rules.

(a) After the Office or Service concerned has completed its analysis and evaluation of the

trator for consideration. If a rule is adopted, it is published in the *Federal Register*.

(b) Final authority to issue, amend, and repeal—

(1) An appendix to a part is delegated to the head of the Office or Service concerned;

(2) Minimum en route IFR altitudes and associated flight data under part 95 of this chapter, and standard instrument approach procedures under part 97 of this chapter is delegated to the Manager, Technical Programs Division, Flight Standards Service; and

(3) Special conditions under part 21 of this chapter is delegated to the Director, Aircraft Certification Service.

(Amdt. 11-15, Eff. 11/9/78); (Amdt. 11-18, Eff. 9/9/80); (Amdt. 11-19, Eff. 9/10/80); (Amdt. 11-20, Eff. 10/14/80); (Amdt. 11-20A, Eff. 12/29/80); (Amdt. 11-32, Eff. 10/25/89); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.51 Denial of petition for [rulemaking].

Whenever it is determined that a petition for [rulemaking] filed under § 11.25 should be denied, the Office or Service concerned prepares, subject to the approval of the Chief Counsel with respect to form and legality, a notice of denial for the Administrator's signature.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.53 Grant or denial of exemption.

(a) The head of the Office or Service concerned may, subject to the approval of the Chief Counsel with respect to form and legality, grant or deny any petition for an exemption. However, if the head of the Office or Service concerned finds that the grant or denial involves a technical or policy determination that should be made by the Administrator, he refers the petition and his recommendations and those of the Chief Counsel to the Administrator for final action.

(b) Whenever a petition is granted or denied under this section, the Office or Service concerned

(a) Except as provided in paragraph (c) of this section, if a petition for exemption is denied, the petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 30 days after the petitioner is notified of the denial of the exemption.

(b) If a petition for exemption is granted, a person other than the initial petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 45 days after the grant of exemption is issued.

(c) If a petition for exemption from the requirements of part 67 of this chapter is denied, the petitioner may file a petition for reconsideration with the Federal Air Surgeon. The petition must be filed in duplicate, within 30 days after the petitioner is notified of the denial of the exemption. However, if the final action on the initial petition was by the Administrator in accordance with the second sentence of § 11.53(a), the Federal Air Surgeon refers the petition for reconsideration and recommendations and those of the Chief Counsel to the Administrator for final action.

(d) A petition for reconsideration under this section must be based on the existence of one or more of the following:

(1) A finding of a material fact that is erroneous.

(2) A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent.

(3) An additional fact relevant to the decision that was not presented in the initial petition for exemption. In order for a petition under paragraph (a) or (c) of this section to be based on this ground, the petition for reconsideration must state the reason the additional fact was not presented in the initial petition.

(Amdt. 11-7, Eff. 4/10/67); (Amdt. 11-9, Eff. 2/25/68); (Amdt. 11-11, Eff. 3/29/71); (Amdt. 11-15, Eff. 11/9/78)

§ 11.61 Scope.

(a) This subpart establishes procedures for initiating, processing, issuing, and publishing rules and orders issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), including—

(1) Designations of controlled airspace under part 71 of this chapter;

(2) Assignments of segments or parts of the navigable airspace for special use purposes, such as restricted areas, military climb corridors, and experimental flight test areas; and

(3) Special rules or orders relating to the assignment or use of navigable airspace.

(b) This subpart does not apply to emergency cases and cases in which the procedures described in paragraph (a) of this section are found to be impractical, unnecessary, or contrary to the public interest.

(c) For the purposes of this subpart, “Director” means the Executive Director of System Operations, the Associate Administrator for Air Traffic or the Director, Air Traffic Rules and Procedures Service, or any person to whom the Director has delegated authority in the matter concerned.

(d) For the purposes of this subpart, “Chief Counsel” means the Chief Counsel, or an Assistant Chief Counsel for a region, or the Assistant Chief Counsel for Regulations and Enforcement or any person to whom the Chief Counsel or Assistant Chief Counsel has delegated his authority in the matter concerned.

(Amdt. 11-3, Eff. 7/13/64); (Amdt. 11-4, Eff. 11/2/64); (Amdt. 11-5, Eff. 8/20/66); (Amdt. 11-15, Eff. 11/9/78); (Amdt. 11-30, Eff. 1/17/86); (Amdt. 11-32, Eff. 10/25/89); (Amdt. 11-35, Eff. 12/12/91 and 9/16/93)

§ 11.63 Filing of proposals.

(a) Each proposal, except one arising in the FAA, for the designation of Federal airways or other areas for normal air traffic use, the assignment of navigable airspace for special use purposes, or the issue of a special rule or order relating to the use of

navigable airspace, must be filed in writing, in triplicate, with the Director.

(b) The director may, on his own motion, initiate the procedures prescribed in this subpart for proposals arising within the FAA.

(c) A proposal requesting the assignment of navigable airspace for special use purposes, or for the designation of an area for air traffic purposes, must include at least the following:

(1) The location and a description of the airspace desired for assignment or designation.

(2) A complete description of the activity or use to be made of that airspace, including a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the assigned or designated area.

(3) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if the assignment or designation is made.

(4) The name and location of the agency, office, facility, or person to whom authority would be delegated to permit the use of the airspace during those times it would not be used for the purpose to which it would be assigned.

(d) Subject to the approval of the Chief Counsel with respect to form and legality, the Director issues a notice of any rejected proposal.

(Amdt. 11-3, Eff. 7/13/64)

§ 11.65 Issue of notice of proposed [rulemaking].

(a) If it is determined that the subject matter of a proposal should be submitted to the [rulemaking] process, or if [rulemaking] action is to be taken on his own motion, the Director, subject to the approval of the Chief Counsel with respect to form and legality, issues a notice of proposed [rulemaking].

(b) Normally, a notice of proposed [rulemaking] is issued within approximately 30 days after receipt of a proposal with respect to which it has been determined that action might be taken.

posed action or a description of the subjects and issues involved.

(d) Approximately 30 days are allowed for submitting written information, views, or arguments on the notice. Petitions for extension of the time for such comments are governed by the provisions of § 11.29(c). If a public hearing is to be held, either the original notice of proposed [rulemaking] or a revised notice gives approximately 30 days' notice. The Director may grant or deny petitions for extension of the time for comments on the notice and may change the date of any hearing previously noticed.

(e) Written information, views, and arguments submitted in response to a notice of proposed [rulemaking], or that are requested after the notice, must be submitted in triplicate.

(f) Each interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. However, to become a part of the formal record for consideration, any information, views, or arguments presented during the conference must also be submitted in writing in accordance with the notice.

(Amdt. 11-1, Eff. 4/23/63); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.67 Hearings.

(a) Sections 7 and 8 of the Administrative Procedure Act do not apply to proceedings used to formulate rules under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)). Whenever the Director, in his discretion, considers that a hearing is necessary to provide informed Administrative action and assure adequate protection of private or public interests, he may hold an informal public hearing. However, any rule or order issued in a case in which such a hearing is held is not based exclusively on the record of the hearing.

(b) The Director designates a presiding officer for each hearing and the Chief Counsel designates a legal adviser.

(c) Normally, hearings held under this section are held in the vicinity of the affected airspace. Interested persons are allotted time to make an oral presentation without interruption and a verbatim

persons or their authorized representatives to speak at the hearing.

(3) The presiding officer allots enough time to each interested person on an equal basis so that his position may be expressed fully and placed on the record, with those who favor it speaking first followed by those who oppose it, initial statements being made as far as possible without interruption, and questions permitted after initial statements have been made by all designated persons.

(4) Arguments and oral statements are limited to the subject named in the notice of proposed [rulemaking].

(5) Written information, views, arguments, or briefs may be offered for the record, but may not be accepted after the hearing unless good cause is shown or the submission is requested by the presiding officer or the Director.

(e) The presiding officer of a hearing may deviate from the procedures prescribed in this section to assure a more complete and informative record.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.69 Adoption of rules or orders.

(a) After the closing date for submitting written comments on a notice or, if a hearing is held; after the hearing, the Office having substantive responsibility for the subject involved studies the entire matter of a proposed rule or order. The Chief Counsel determines whether legal justification exists for the proposed action, and thereafter prepares an appropriate rule, order, or notice of denial. The rule, order, or notice of denial is then submitted to the Director for his action.

(b) Each rule or order issued by the Director is published in the *Federal Register* and in such other publications as the Director considers desirable. Each notice of denial is sent to the person who made the proposal and to such other interested persons as the Director considers desirable.

(c) Each rule or order issued under this subpart becomes effective not less than 30 days after it is published, except in an emergency, or when it is impractical, unnecessary, or contrary to the public interest.

(b) The Director may, subject to the approval of the Chief Counsel with respect to form and legality, grant or deny any petition filed under this section and shall notify the petitioner of his action. (Amdt. 11-3, Eff. 7/13/64)

§ 11.73 Petitions for rehearing or reconsideration of rules or orders.

(a) Any interested person may petition the Administrator for a rehearing on, or for reconsideration of, any rule or order issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)). Such a petition must be filed, in triplicate, within 30 days after the rule or order is published in the *Federal Register*. It must contain a brief statement of the complaint and an explanation as to how the rule or order is contrary to the public interest.

stay the effect of a rule or order.

§ 11.75 Petitions for revoking or modifying rules or orders.

(a) Any interested person may petition to revoke or modify any rule or order covered by this subpart. Such a petition must be filed, in triplicate, with the Director and must clearly state the information, views, and arguments the petitioner considers necessary to support the requested action and must clearly indicate the effect the action would have on the use of navigable airspace.

(b) A petition filed under this section is processed in the same manner as an original proposal, or in any other manner that the Director considers necessary or desirable.

(Amdt. 11-3, Eff. 7/13/64)

§ 11.81 Scope.

(a) This subpart prescribes the procedures to be followed in [rulemaking] proceedings for Airworthiness Directives issued pursuant to part 39 and in granting or denying exemptions from Airworthiness Directives. It also designates the persons that are authorized to act for the Administrator in connection with those proceedings and exemptions.

(b) For the purposes of this subpart, "Director" means the Director, Aircraft Certification Service, or a Manager of an Aircraft Certification Directorate (Directorate Manager).

(c) The authority for issuing Airworthiness Directives is limited to the following persons:

(1) The Director, Aircraft Certification Service; and

(2) Managers of the Aircraft Certification Directorates for products under the authority of those directorates, as determined by the Administrator.

(d) For the purposes of this subpart, "Chief Counsel" means the Chief Counsel or an Assistant Chief Counsel for a region or directorate, or the Assistant Chief Counsel for Regulations and Enforcement, or any person to whom the Chief Counsel or Assistant Chief Counsel for a region has delegated his authority in the matter concerned. (Amdt. 11-15, Eff. 11/9/78); (Amdt. 11-19, Eff. 9/10/80); (Amdt. 11-21, Eff. 12/8/80); (Amdt. 11-32, Eff. 10/25/89); [(Amdt. 11-41, Eff. 4/24/96)]

§ 11.83 Processing of petitions for [rulemaking] or exemption.

Whenever the FAA receives a petition for [rulemaking] or for an exemption, a copy of the petition is referred for action, as provided in § 11.27, to the Director having Airworthiness Directive responsibility for the product involved.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.85 Issue of notice of proposed [rulemaking].

Whenever he determines that a notice of proposed [rulemaking] is necessary or desirable, the Director may, subject to the approval of the Chief Counsel with respect to form and legality issue the notice provided for in § 11.29. In addition, he may grant or deny petitions for extension of the time for comments on the notice, filed under § 11.29(c).

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.87 Proceedings after notice of proposed [rulemaking].

(a) Each person who submits written information, views, or arguments in response to a notice of proposed [rulemaking], or during additional [rulemaking] proceedings in connection with such a notice, must file the number of copies specified in the notice.

(b) Whenever the Director determines that additional [rulemaking] proceedings of the kind described in § 11.33 are necessary or desirable, he may designate representatives to conduct those proceedings.

[(Amdt. 11-41, Eff. 4/24/96)]

§ 11.89 Adoption of final rules.

In any case in which a notice of proposed [rulemaking] was issued, the Director completes his analysis and evaluation of the information, views, and arguments submitted with respect to the proposed rule and studies the entire matter. In any case in which the subject matter is, for good cause, submitted to the [rulemaking] process without notice, the Director initiates the procedure. The Chief Counsel determines whether legal justification exists for the action proposed, and thereafter prepares an appropriate rule or notice of denial. The rule or notice of denial is then submitted to the Director for his action.

[(Amdt. 11-41, Eff. 4/24/96)]

to form and legality, a notice to the petitioner informing him of the action taken.

§ 11.93 Petitions for reconsideration of rules.

(a) Any interested person may petition the Administrator for a rehearing on, or for reconsider-

purpose and the reasons therefor, orally at the hearing or in writing within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator orders otherwise, the filing of a petition under this section does not stay the effect of a rule or order.

